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Supreme Court of the United States

OCTOBER TERM 1943

No. 754

RUFUS MESHBERGER and LELIA B. MESHBERGER,
Petitioners,

vs.

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,
Respondent.

PETITION AND BRIEF

For Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

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PETITION

For a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

(The brief in support of this petition begins at p. 12.)

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

A Summary Statement of the Matter Involved.

The Statute.

The case arises out of Section 75 of the Bankruptcy Act, 11 USC 203, which relates to proceedings for the rehabilitation of farmer debtors. The portion of the statute which is most particularly involved is Section 75 (s).

The Issues.

The chief question presented is whether a farmer debtor's **right** of redemption is **extinguished** under the following circumstances: A mortgage holder (respondent here) sought and obtained an order in the bankruptcy court fixing the valuation at which the farm was to be redeemed under the statute and setting a time for paying it into court. The mortgage holder then contested the order by appeal claiming it to be erroneous and the time expired before the valuation was finally determined.

There is also presented the question whether a farmer debtor, who is compelled to purchase stock in a subsidiary of the mortgage lender, is entitled to have credit for the par value of his stock when he pays the debt when he redeems his farm from the mortgage, insolvency of the subsidiary not being involved.

Another question presented is whether rent money paid by a farmer debtor and in the hands of the court when the

court fixes the amount of redemption money shall be credited upon the amount of redemption money so fixed.

The Decisions Below.

The decision of the Seventh Circuit Court of Appeals was dated December 2, 1943, and is reported as *Meshberger* v. *Federal Land Bank,* CCA 7, 1943, 138 Fed. (2d) 954. It appears at page 138 of the record.

The opinion of the district court, which is not reported, is found in the record at page 71 and the final order of the district court is at page 74.

A Very Short Statement of the Facts.

The mortgage holder (respondent here) moved the bankruptcy court to enter an order fixing a value of the farmer debtors' farm for redemption and fixing a time for payment into court. Such an order was entered whereupon the respondent who sought the order appealed, assigning as error that the value so fixed should be increased and the time shortened. R. 42, paragraph number 2. Upon appeal the valuation was affirmed. Opinion on that appeal: *Federal Land Bank* v. *Meshberger,* 1942, 131 Fed. (2d) 281, third paragraph from the end. Order on that appeal: R. 129. **That appeal is not the subject of this petition for certiorari** but it bears an important relation to it.

This petition for certiorari grows out of the subsequent procedure now to be narrated. After the valuation of the farm had been finally determined by the appeal just referred to, the farmer debtors requested the bankruptcy court to permit them to redeem at the fixed price and they

also sought credit thereon for stock in a subsidiary of the Federal Land Bank, called the National Farm Loan Association, which they were compelled to pay for by deduction from their original loan, and for rent money then in the possession of the court. R. 59 to 61. R. 66 to 71. The mortgage holder (respondent here) objected (R. 63) to redemption, and also to any credits if redemption be allowed. The request of the farmer debtors was denied, (R. 71), although the entire $6,000 fixed by that court and sustained by the appellate court was available and was later paid into the court in cash (R. 94) before the appeal, which is involved here, was certified to the appellate court. R. 130-131. The appellate court affirmed the bankruptcy court (R. 143) on the ground that because the **time** originally fixed in the bankruptcy court had expired, during the appeal litigation, the **right** to redeem was thereby extinguished. As already stated the expiration occurred during the pendency of the appeal by the mortgage holder (respondent here) from the order sought by it.

Both courts failed to pass upon the petition of the farmer debtors for credits. The petitioners did not deduct any sum from their cash tender because of their claims to credit but paid to the court the full $6,000.

II.

Statement of the Basis of the Jurisdiction of This Court.

The jurisdiction of this court is conferred by Section 240(a) of the Judicial Code; 28 USC 347 (a).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925; 28 USC 350. The final judgment of the court below which was entered on December 2, 1943

(R. 143), became final on January 3, 1944, when a petition for rehearing was denied. (R. 146). This petition is filed within three months after the original entry of the judgment and of the denial of the petition for rehearing.

III.

The Questions Submitted.

The questions submitted are:

1.

Whether the farmer debtors' right of redemption was extinguished because the bankruptcy court upon the application of the mortgage holder (respondent here) set a price for redemption which the mortgage holder then claimed to be erroneous and contested by appeal, and that appeal was decided subsequent to the time set by the bankruptcy court for payment of the price into court.

2.

Whether the power of the bankruptcy court to permit the farmer debtors to redeem was lost because the mortgage holder (respondent here) sought an order and then claimed it to be erroneous and contested it by appeal and the time set for the redemption expired before the appeal was decided.

3.

Whether by seeking and obtaining an order fixing the amount and time for redemption and then claiming it to be erroneous and appealing therefrom a mortgage holder (respondent here) can object to payment of the amount finally determined by the appeal upon the sole ground that the time had elapsed during the appeal.

4.

Whether the bankruptcy court could deny to the farmer debtors the statutory right to redeem their farm in the amount of money fixed by the order of the court on the mere ground that the time previously set by the court had expired while the mortgage holder (respondent here) was contesting said order by appeal claiming it to be erroneous.

5.

Whether the bankruptcy court could deny to the farmer debtors the statutory right to redeem their farm in the amount fixed by its order on the mere ground that the time previously set by the court had expired while the mortgage holder (respondent here) was contesting said order by appeal claiming it to be erroneous, and thereafter appeared and litigated the petition of the farmer debtors to be given credit upon the amount fixed by the court for stock in the National Farm Loan Association, its subsidiary, and for rent money in the hands of the court.

6.

Whether the bankruptcy Court could deny to the farmer debtors the right to apply, as part payment on the amount so fixed by the court, the par value of stock which they were compelled to purchase in a National Farm Loan Association, a subsidiary of the mortgage holder, the Federal Land Bank (respondent here), through which subsidiary they borrowed the sum secured by the mortgage.

7.

Whether the bankruptcy court could deny to the farmer debtors the right to apply, as part credit on the amount so fixed by the court, the rent money then in the hands of the court.

IV.

Reasons Relied Upon for the Allowance of a Writ of Certiorari.

1.

The decisions below involve a question of great importance in the administration of an act of Congress whose purpose is the rehabilitation of farmer debtors. Section 75 of the Bankruptcy Act. 11 USC 203.

2.

In so far as the decisions below may be defended upon the ground that the date for redemption expired before the price set by the bankruptcy court was paid into court, the delay was wholly due to the mortgage holder (respondent here), who sought an order fixing the price and then contested it claiming it to be erroneous, by its appeal which was not decided until after the time for payment into the bankruptcy court expired.

3.

The courts erred in disregarding the fact that after the time set in the order had passed while the respondent was contesting that order as erroneous the farmer debtors petitioned the court to be allowed to redeem at the fixed price and to have credit for their National Farm Loan Association stock and for rent money held by the court and the respondent thereupon litigated those claims, thus recognizing that the right of redemption was still alive.

4.

By its appeal from the order it sought the mortgage hold-

er (respondent here) itself stayed the operation of that order so that it could not seek its enforcement, and its contest of the amount to be paid on its secured debt prevented the farmer debtors from obtaining or paying over the amount ultimately to be fixed until it was finally determined.

5.

The holdings of the courts below that notwithstanding the contest through appeal by the mortgage holder (respondent here) of the order it sought and obtained, it yet had a right to have the order complied with during the appeal though by its terms the time it set expired during the appeal, is in direct conflict with the decision of this court in *Bronson* v. *LaCrosse,* 68 U. S. (1 Wall.) 405, and the long-standing adherence to the rule there enunciated.

6.

The contest by the sole beneficiary of the order it sought by attacking the amount of redemption money to be paid into court made it uncertain what sum the farmer debtors had to pay and that uncertainty made it impossible to obtain by loan the sum required to make the full amount ultimately to be required. The courts below erroneously shifted the effect of the respondent's litigation of the order it sought from respondent, where it belonged, to the petitioners.

7.

The mortgage holder (respondent here) through its conduct in contesting by appeal the amount of money to be paid for its benefit is estopped from objecting to redemption by the farmer debtors of their farm merely because payment of the redemption money was delayed as a result of its litigation.

8.

The principle of the decisions of the courts below is untenable because even if the farmer debtors had been able to pay in **the amount originally fixed** by the bankruptcy court within the time set notwithstanding the contest of the mortgage holder (respondent here), and thereafter **by final determination that amount was held to be too small,** the reasoning of these decisions would have required the same conclusion, namely that the order **was not obeyed as finally determined,** and, ergo, the right of redemption was lost.

9.

The principle of the decisions of the courts below is also untenable because if the farmer debtors had paid in the amount of the valuation **within the time originally set** by the bankruptcy court **but short of the time as thereafter finally determined** by the contest of the mortgage holder (respondent here), the reasoning of those decisions would have required the same conclusion, namely that **the order had not been obeyed as finally determined**, and, ergo, the right of redemption was lost.

10.

The decisions of the courts below are untenable because they would throw upon farmer debtors the necessity of gambling upon the decision in the last court to which the contest would be submitted whereas the uncertainty was created solely by the contest conducted by that beneficiary—the mortgage holder (respondent here), who itself sought the very order it contested.

11.

The decisions of the courts below would, if permitted

to become the law, render redemption by a farmer debtor impossible under the statute because any creditor seeking a valuation order and obtaining it and then contesting that order by appeal, could thereby defeat redemption at the value of the security if it could prolong its litigation beyond the time set for payment.

12.

The decisions by the courts below are judicial amendments to the statute which would thwart its purpose by defeating the efforts of a farmer debtor to redeem his farm at its value.

13.

The decisions of the courts below in denying the right of the farmer debtors to redeem in accordance with the purpose of the statute because of the uncertainty created by the respondent mortgage holder's contest of the order it sought, while meantime the time lapsed, is in violent conflict with the decisions of this court in at least seven cases where it directed that the benefits of an unobeyed statute be accorded to litigants who misconceived the law and followed the wrong statute until the time had long passed for obeying the correct one. In those seven cases the appellants could easily have protected their rights of appeal by the long established expedient of invoking both statutes alternatively.

Reconstruction v. *Prudence*, 1941, 311 U. S. 579.
Manufacturers v. *Prudence*, 1941, 312 U. S. 649.
Endelman v. *Prudence*, 1941, 312 U. S. 649.
Kelby v. *Prudence*, 1941, 312 U. S. 649.
Prudence v. *Prudence*, 1941, 312 U. S. 649.
Davison v. *Prudence*, 1941, 312 U. S. 649.
Denham v. *Munson*, 1941, 312 U. S. 650.

14.

In the concurring opinion in *Reconstruction* v. *Prudence,* 1941, 311 U. S. 579, it was said "reversal of the judgment is justified by our broad power to make such disposition of the case as justice requires" citing *Watts* v. *Unione Austriaca,* 248 U. S. 9, 21; *Montgomery Ward & Co.,* v. *Duncan,* 311 U. S. 243, and *Rorick* v. *Commissioners,* 307 U. S. 208, 213.

15.

As to the refusal to allow the farmer debtors to take credit upon the amount fixed by the court for the par value of stock in the National Farm Loan Association, a subsidiary of the Federal Land Bank, which is the mortgage holder and respondent here, such refusal is not consistent with the holding of this court in *Knox* v. *Phillips,* 1937, 300 U. S. 194, because there the National Farm Loan Association was insolvent and insolvency of the National Farm Loan Association involved here is not a factor.

Wherefore your petitioners pray that a proper writ of certiorari may issue to the Circuit Court of Appeals for the Seventh Circuit so that this cause may be determined by this court and for all other relief as may be proper.

Respectfully submitted,

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Lima, Ohio
January 21, 1944